

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 68 (Sub-No. 4X)

LAKE SUPERIOR & ISHPEMING RAILROAD COMPANY – ABANDONMENT  
EXEMPTION – IN MARQUETTE COUNTY, MICH.

Decided: September 13, 2012

By decision and notice of interim trail use or abandonment (NITU) served on January 19, 2005, the Board authorized a 180-day period for Lake Superior & Ishpeming Railroad Company (LSI) and the Michigan Department of Natural Resources (MDNR) to negotiate an interim trail use/rail banking agreement under 16 U.S.C. § 1247(d) (Trails Act) for an 8.9 mile segment of a rail line known as the Republic Subdivision, extending from milepost 85.6 at or near Humboldt Junction to milepost 94.5 at or near the Republic Mine in Marquette County, Mich. By decisions served on August 23, 2005, and November 23, 2005, the NITU negotiating period was extended to December 15, 2005. LSI and MDNR reached an interim trail use agreement within that period.

On August 7, 2012, Mineral Range, Inc. (MRI) filed in Docket No. FD 35658 a verified notice of exemption under 49 C.F.R. § 1150.31 to acquire from LSI and to operate: (1) a 12.06-mile segment of rail line between milepost 73.60 at or near Landing Junction and milepost 85.66 at or near Humboldt Junction in Marquette County, Mich. (Segment 1); and (2) a 1.9-mile segment of the rail-banked railroad right-of-way between milepost 85.66 at or near Humboldt Junction and milepost 87.56 at or near Humboldt in Marquette County, Mich. (Segment 2).<sup>1</sup>

MRI simultaneously filed a petition in this Docket to: (1) partially vacate the NITU pursuant to 49 C.F.R. § 1152.29 (d)(3) to allow restoration of rail service over Segment 2; and (2) issue an appropriate replacement NITU covering the remaining portion of the rail-banked right-of-way south of Humboldt (milepost 87.56).

Under the Trails Act, interim trail use is subject to the future restoration of rail service over the right-of-way. 16 U.S.C. § 1247(d). Thus, an interim trail use arrangement is subject to being cut off for the reinstitution of rail service at any time. It is well settled that the abandoning carrier's right to cut off the interim trail use arrangement and to reinstitute rail service can be conveyed to a third party and that any carrier authorized to acquire or operate over a rail-banked line need not obtain separate authority to reactivate that line. See, e.g., R.J. Corman Pa. Lines, Inc. – Constr. & Operation Exemption – in Clearfield Cnty., Pa., FD 35116 (STB served July 27,

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<sup>1</sup> See Mineral Range, Inc. – Acquis. and Operation Exemption – Rail Line of Lake Superior & Ishpeming R.R., FD 35658 (STB served Aug. 23, 2012).

2009); Iowa Power – Constr. Exemption – Council Bluffs, Iowa, 8 I.C.C.2d 858 (1990); Norfolk & W. Ry. –Aban. Between St. Mary’s & Minister in Auglaize Cnty., Ohio, 9 I.C.C.2d 1015 (1993).

Here LSI and MRI have entered into an agreement whereby LSI has conveyed its right to reinstitute rail service over Segment 2 to MRI. Moreover, MRI has obtained an exemption to operate over Segment 2.<sup>2</sup> MRI has complied with the requirements of 49 C.F.R. § 1152.29(d)(3) regarding a request to vacate the NITU. Therefore, the Board will reopen the abandonment proceeding and partially vacate the NITU so that rail service can be restored on Segment 2.<sup>3</sup>

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. The notice of interim trail use issued on January 19, 2005, is partially vacated to permit the reactivation of rail service on Segment 2.
3. The notice of interim trail use issued on January 19, 2005, remains in effect as to the remainder of the rail-banked right-of-way south of Humboldt (milepost 87.56).
4. This decision is effective on its date of service.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

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<sup>2</sup> Id.

<sup>3</sup> Because this decision only partially vacates the NITU, the Board need not issue a replacement NITU. The Board’s January 19, 2005 NITU will remain in effect as to the remainder of the rail-banked right-of-way south of Humboldt (milepost 87.56).